IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 5-1-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.1226 of 2003

G. Annamalai ... Appellant

Vs.

1. The Joint Director (Higher Secondary),
College Road, Madras - 600 006.

2. The Chief Educational Officer,
Panagal Buildings, Saidapet,
Madras - 600 015.

3. The District Educational Officer,
Madras South,
Egmore, Madras - 8.

4. The Secretary,
Theagarayanagar Higher Secondary School,
17, Venkatanarayana Road,
T.Nagar,
Madras - 600 017. ... Respondents

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.13392 of 1995 dated 11.10.2002 under Article 226 of Constitution of India to issue a writ of Mandamus calling for the records relating to the order of the 1st respondent made in his proceedings Mu.Mu.No.176639/W7/93 dated 18.8.95 and for records relating to the order of the 4th respondent made in his letter No.330 dated 31.8.1995 and quash these orders and consequently further direct the 4th Respondent to allow this Petitioner to continue in service on re employment terms till the end of the academic year ie till 31.5.1996.

For Appellant : Mr.G.Rajagopalan,
Senior Counsel
for Mr.S.Chandrasekaran

For RR-1 to 3 : Mrs.Bhavani Subbarayan
Government Advocate

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For 4th Respondent : Mr.A.V.K.Ezhilmani

J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

The claim of the appellant seeking re-employment till the end of the academic year from 1.9.1995 to 31.5.1996 was rejected by the 4th respondent management, which was affirmed by the learned single Judge by order dated 11.10.2002 in W.P.No.13392 of 1995. The said order of the learned single Judge is under challenge in this writ appeal.

2. Appellant was working as Post Graduate Teacher (Tamil) and as Assistant Headmaster (PG grade) in the 4th respondent School. The grievance of the appellant is that he reached the age of superannuation on 31.8.1995 and his request for re-employment till the end of the academic year i.e., till 31.5.1996 was rejected and the said order was challenged by the appellant in W.P.No.13392 of 1995, which was dismissed by the learned single Judge. It is against the said order, this writ appeal has been filed.

3. The claim of the appellant for promotion to the post of Headmaster was considered by the 4th respondent and he was found not fit to be promoted as Headmaster, which resulted in series of litigations. The appellant reached the age of superannuation on 31.8.1995 and he applied for re-employment till the end of the academic year. The same was considered by the 4th respondent Management and the School Committee on 30.8.1995, taking note of the character and conduct of the appellant, which were found not satisfactory and resolved not to grant re-employment till the end of the academic year. The said decision of the School Committee is challenged by the appellant on the ground that the appellant was given appreciation certificate by the Chief Educational Officer, Chennai District. According to the appellant, but for his character and conduct being satisfactory, he could not have been given the said award and therefore the 4th respondent is not justified in denying re-employment on the ground that the appellant's conduct and character are not satisfactory.

4. The learned counsel appearing for the 4th respondent submitted that the appellant was issued with a charge memo and after enquiry, by order dated 6.11.1993, a punishment was imposed withholding the increment for one year without cumulative effect and the appeal filed by the appellant was also rejected and thus the punishment imposed on the appellant has become final and therefore the appellant having been punished for delinquency, cannot contend that his character and conduct are good and he is to be given re-employment.

5. The learned Government Advocate submitted that in terms of the Government Orders issued in G.O.Ms.No.1643 Education department,

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dated 21.10.1986, the 4th respondent management is entitled to verify the character and conduct and also see whether the said teacher is physically fit to hold the post.

6. The learned single Judge accepted the contention of the management that the appellant's conduct and character are found not satisfactory and upheld the order refusing the request of the appellant seeking re-employment.

7. We have considered the rival submissions of the respective counsels.

8. It is well settled in law that a teacher retiring in the middle of the academic year is entitled to get re-employment till the end of the academic year on satisfying the conditions contained in the Government Orders, particularly, G.O.Ms.No.452 dated 24.3.1970, G.O.Ms.No.1712 dated 5.8.1976 and G.O.Ms.No.1653 dated 21.10.1986. In all the Government Orders it is stated that for granting re-employment, the work of the teacher and conduct shall be satisfactory apart from physical fitness for further service.

9. In the case on hand, it is the specific case of the management that the appellant's conduct is not satisfactory and he was imposed with punishment of withholding of increment for one year without cumulative effect for misconduct and the appeal filed against the said order of punishment was also dismissed by the Joint Director of School Education and therefore the management rejected the request for re-employment of the appellant.

10. In the light of the decision arrived at by the management, taking note of the conduct of the appellant, we are unable to sustain the contention of the appellant that he is entitled to get re-employment from 1.9.1995 to 31.5.1996. Only when the teacher satisfies that his/her conduct and character are good and that he/she is physically fit to be re-employed, re-employment can be sought for. In this case, the appellant's request was already considered by the School Committee and rejected.

11. We do not find any infirmity in the decision taken by the 4th respondent as well as in the order of the learned single Judge in dismissing the writ petition. There is no merit in the writ appeal and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vr/

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To

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   Panagal Buildings, Saidapet,
   Madras - 600 015.

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   Madras South, Egmore, Madras - 8.

1 cc to Mr.K. Vaidyanathan, Advocate, Sr. 1066
1 cc to Mr.A.V.K.Ezhilmani, Advocate, Sr. 918
1 cc to Mr.S.Chandrasekaran, Advocate, Sr. 940

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